No. 88-607 (3)

Supreme Court, U.S.
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Supreme Court of the United States

OCTOBER TERM 1988

JOSEPHINE WEIGNER,

Plaintiff-Petitioner,

-against-

THE CITY OF NEW YORK,

Defendant-Respondent.

PETITIONER'S REPLY TO ARGUMENTS FIRST RAISED IN RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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ADDITIONAL QUESTIONS POSED FOR REVIEW
(Raised in Respondent's Answer
and Replied to Herein)

ARE THE NEW YORK CITY TAX FORECLOSURE PROCEDURES CONSTITUTIONALLY INVALID BECAUSE OF THE ARBITRARY NATURE OF THE REDEMPTION (RELEASE) PROCEDURES?

ISN'T THE RESPONDENT'S REFUSAL TO PERMIT TAX FORECLOSURE REDEMPTION IN THIS CASE AN INSTANCE OF THE TAKING OF PRIVATE PROPERTY FOR PUBLIC USE WITHOUT JUST COMPENSATION IN VIOLATION OF THE FIFTH AMENDMENT?

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A.

RESPONDENT'S ANSWERING BRIEF HAS RAISED TWO ADDITIONAL QUESTIONS FOR REVIEW; THE FIRST IS THAT OF THE CONSTITUTIONALITY OF NEW YORK CITY'S TAX SALE REDEMPTION PROCEDURES.

In his opinion below, Judge Oakes found as a second reason for the unconstitutionality of New York City's Tax Foreclosure Procedures, "... the 'release' provisions, which place the approval of certain applications wholly within the 'discretion' of the Board of Estimate...." He found them to be totally arbitrary, and held that they "deprived Weigner of procedural due process and of equal protection of the laws." (A-15)

Respondent raised this issue repeatedly in its answering brief (R.B. pp. 9 through 12, 14, 18 and 32 through 35); and petitioner requests that it become an additional question presented for review.

B.

THE TRIAL COURT'S DISMISSAL OF ALLEGATIONS OF OFFICIAL CORRUPTION BY USE OF SUMMARY JUDGMENT, WITHOUT EVEN ACCORDING DISCOVERY RIGHTS TO PETITIONER, HAS HAD THE EFFECT OF A COVER-UP OF ONE MORE INSTANCE OF N.Y. CITY OFFICIAL CORRUPTION.

Petitioner alleged, in the complaint in this case, discrimination against her by N.Y. City officials who refused to grant her the opportunity to redeem her property, while granting that opportunity to others less worthy. (A-23)

In its brief in opposition, respondent restates the District Court's holding that petitioner had presented "not a scintilla of evidence" to support such allegation (R.B. p. 14). How could evidence of such allegation be produced without discovery? Petitioner had shown that five N.Y. City officials had communicated orally with petitioner's attorney the suggestion that she was not making a strong enough case, and that

petitioner was made to feel that bribes were being solicited. (A-15) Yet petitioner was denied discovery on these issues by the District Court Judge. (A-23)

Judge Oakes, in his dissent, held that petitioner had at least made out a colorable claim of arbitrariness, and should have been allowed discovery on the question of whose applications were approved and whose were not. (A-23)

It is common knowledge that corruption is rampant, if not systemic, in New York City Municipal Government. See J. NEWFIELD & W. BARRETT, CITY FOR SALE, 1988 Harper & Row, Publishers.

While petitioner does not expect this Court to become mired in questions concerning the deplorable conduct of N.Y. City Government, the contrast between respondent's history of corruption and

petitioner's innocent application to redeem her property is most significant.

Respondent's Brief is replete with criticisms[1] of petitioner, eg. "Petitioner's affidavit did not include any future plans for the property." (R.B. p. 10) See also (R.B. pp. 8, 9, 30 and 33) Coming from respondent whose municipal administration is rife with crime and corruption, allegations of petitioner's misconduct are absurd.

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[1] Moreover those criticisms of petitioner's misconduct in not paying her taxes soon enough relate to constructive notice. Constructive notice had been ruled out by this Court as an element of procedural due process. MENNONITE BOARD OF MISSIONS v. ADAMS, 462, U.S. 791, 103 S.Ct. 2706, 77 L.Ed2d 180 (1983).

C.

THE LAWS OF THIS NATION FAVOR A TAXPAYER'S RIGHT TO BE PERMITTED TO REDEEM FROM TAX FORFEITURE

Respondent's attitude[2] throughout this case in considering petitioner's timely redemption application is that of a high-handed authoritarian dealing with an errant child. (See R.B. pp. 9 and 10).

Such high-handedness toward a taxpayer does not square with long-established decisions of this Court which favor allowing taxpayers a right to redeem from tax sales. HEPBURN v. DUBOIS, 27 U.S. 345, 12 PET. 345, 9 L.Ed. 1111 (1838).

"The right to redeem the title of lands sold for taxes is one commonly reserved, and the right is favored by the policy of the law." BARRETT v. HOLMES, 102 U.S. 651, 657; 26 L.Ed. 291, 293 (1880).

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[2] Respondent refers repeatedly in its brief to petitioner's request for a "discretionary" release. Petitioner challenges that terminology. Judge Oakes' opinion below shows, most eloquently, (A-22) that the term "discretionary release" is a misnomer.

In tax foreclosure cases, laws are strictly construed against the taxing authority; and any doubt must be resolved in favor of the taxpayer. THATCHER v. POWELL, 19 U.S. 119, 6 WHEAT. 119, 5 L.Ed. 221 (1821); SAMARA v. CITY OF N.Y., 535 F.Supp. 673, 675 (S.D.N.Y. 1982).

D.

THE SECOND QUESTION RAISED FOR REVIEW BY RESPONDENT'S ANSWERING BRIEF CONCERNS N.Y. CITY'S TAKING OF PRIVATE PROPERTY FOR PUBLIC USE, BY SUBSTITUTING TAX FORECLOSURE FOR JUST COMPENSATION.

Respondent argues that subject real property was located in an area being considered by the Mayor's office as a potential affordable housing site. (R.B. p. 11); but the U.S. CONSTITUTION provides specifically "...NOR SHALL PRIVATE PROPERTY BE TAKEN FOR PUBLIC USE, WITHOUT JUST COMPENSATION." Fifth Amendment, last phrase. (P.B. p.2)

Judge Oakes, in the dissent, found the

City of New York, through suspect procedures and arbitrary administrative actions, has gained possession of property worth between $183,000.00 and $250,000.00, because an out-of-state woman failed to pay less than $10,000.00 in property taxes. (A-23)

Respondent claims, "...subject properties were part of an assemblage within a 'Housing Study' area...." (R.B. p.11)

In other words, N.Y. City held other adjacent parcels and wanted petitioner's as a part of an assembly. Ibid.

This, therefore, is a case of taking without Just Compensation in violation of the Fifth Amendment to the U.S. CONSTITUTION.

E.

RESPONDENT'S ATTEMPT TO EQUATE SERVICE OF A PARKING TICKET BY ORDINARY MAIL TO CONSTITUTIONALLY-MANDATED PROCEDURAL DUE PROCESS IN TAX FORECLOSURE CASES, IS ILLUSTRATIVE OF THE POVERTY OF RESPONDENT'S ARGUMENTS.

Respondent cites GARDNER v. CITY OF

COLUMBUS OHIO, 841 F2d 1272 (6th CIR. 1988) as justification for the procedural due process of its statutory notice scheme. Even the opinion in that case sustains petitioner's argument. 841 F2d 1272 at 1279. How can parking fines be equated to real estate title forfeiture? The law requires notice commensurate with the circumstances of the case. MULLANE v. CENTRAL HANOVER BANK & TRUST CO., 339 U.S. 306, 70 S.Ct. 652 (1950). GOODYEAR TIRE & RUBBER CO. v. RUBY, 312 Md. 413, 540 A.2d 482 (1988) is similarly irrelevant.

Respondent cites N.Y. CPLR §304, Practice Commentary, C304:1 and §301 (McKinney 1978 and Supp. 1988) to attempt to justify service of summons and complaint by publication.(R.B. p. 24) That citation of authority fails to support the point for which cited. Instead, N.Y. Law requires much more. The appropriate rule may be

found at Supp. Practice Commentary, C315:1 N.Y. CIVIL PRACTICE LAW AND RULES (McKinney 1978 and SUPP. 1988).

F.

RESPONDENT'S ANSWERING BRIEF REPRESENTS TO THIS HONORABLE COURT THAT PETITIONER WAS GIVEN A FAIR HEARING BEFORE THE NEW YORK CITY BOARD OF ESTIMATE ON SEPTEMBER 25, 1986. (R.B. p.11) NOTHING COULD BE FARTHER FROM REALITY.

The following description of the Board of Estimate hearing was submitted by Edward J.Ledogar to the District Court below in a sworn statement dated 5/8/87:

> "15. The so-called Board of Estimate hearing on September 25, 1986 was a sham and a farce. After arriving by 9:30 a.m., according to directions given by the City's representative upon prior inquiry from my office, the subject matter was reached late in the afternoon. Prior to that, numerous issues were heard by the Board, including hundreds of citizens and dozens of their political representatives.
>
> Subject hearing consisted of three (3) minutes wherein plaintiff's attorney was allowed to speak. The decision to deny had been pre-determined (it was pre-printed).

All, or virtually all, of the members of the City's Board of Estimate were present by sub-officials by the time subject case was reached.

The sub-officials representing boardmembers, by the time our case was reached, were constantly milling about and paid little or no attention to statements made by plaintiff's attorney on behalf of the applicant. After my brief, three-minute statement was cut off by a clerk, a prepared statement of denial was polparroted into the record. There was no hearing of the issues; no less a fair hearing. The proceedings before the Board of Estimate were a travesty; they were a farce. To characterize them as due process, due consideration, or a fair hearing is preposterous and untruthful."

CONCLUSION

A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT SHOULD ISSUE SINCE IMPORTANT U.S. CONSTITUTIONAL ISSUES IN THIS CASE WERE NOT PROPERLY DECIDED BELOW.

Respectfully submitted,

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Attorney for Petitioner